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June 11, 1998

HAND DELIVERED

Ms. Janice M. Myles  
Common Carrier Bureau  
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1919 M Street, NW, Room 544  
Washington, D.C. 20554

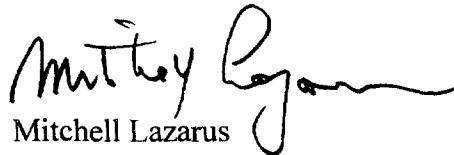
Re: CC Docket No. 97-211

Dear Ms. Myles:

Pursuant to the Public Notice of June 4, 1998, I enclose on diskette the Comments of Internet Service Providers' Consortium filed this date in CC Docket no. 97-211. The diskette is formatted in WordPerfect 5.1. The document name is "world-co.wp".

If there are any questions regarding the attached, please contact the undersigned directly.

Respectfully submitted,



Mitchell Lazarus

Counsel for Internet Service Providers' Consortium

ML:deb

Enclosure

cc: ✓ Magalie R. Salas, Esq. (By Hand Delivery w/o Enclosure)  
Mr. Charles Smith (By US Mail w/Enclosure)

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June 11, 1998

**HAND DELIVERED**

Magalie R. Salas, Esquire

Secretary

Federal Communications Commission

1919 M Street, NW, Room 222

Washington, D.C. 20554

Re: CC Docket No. 97-211

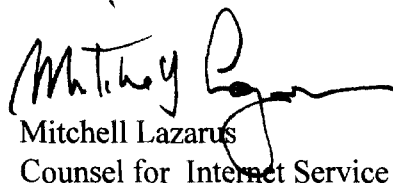
Dear Ms. Salas:

On behalf of Internet Service Providers' Consortium, enclosed please find the original and 12 copies of Comments of Internet Service Providers' Consortium to be filed in CC Docket no. 97-211.

Please date stamp the enclosed extra copy of this pleading and return it to us.

If there are any questions regarding the attached, please contact the undersigned directly.

Respectfully submitted,

  
Mitchell Lazarus  
Counsel for Internet Service Providers' Consortium

ML:deb

Enclosures

cc: Ms. Janice M. Myles (By Hand Delivery w/Enclosure)  
Common Carrier Bureau  
International Transcription Services, Inc. (By Hand Delivery w/Enclosure)  
Mr. Charles Smith (By US Mail w/Enclosure)

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

JUN 11 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Application of WorldCom, Inc. and  
MCI Communications Corporation for  
Transfer of Control of MCI Communications  
Corporation to WorldCom, Inc.

CC Docket No. 97-211

**COMMENTS OF  
INTERNET SERVICE PROVIDERS' CONSORTIUM**

Internet Service Providers' Consortium (ISP/C) respectfully submits these Comments in response to the June 4 Public Notice in the above-captioned proceeding.<sup>1</sup>

ISP/C is the largest international trade association of Internet Service Providers (ISPs), with 200 members in 42 states and 10 countries.<sup>2</sup> Comprised primarily of small to mid-size regional providers that serve approximately a half-million subscribers, ISP/C has a direct interest

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<sup>1</sup> "Commission Seeks Comment on MCI Ex Parte Describing Internet Aspects of Proposed WorldCom and MCI Merger," CC Docket No. 97-211, DA 98-1059 (released June 4, 1998).

Several events relevant to this proceeding occurred after release of the Public Notice. According to trade press reports, officials of the European Community signaled that the MCI-C&W transaction did not fully resolve their concerns about anticompetitive consequences of the MCI-WorldCom merger. As a result, MCI plans to announce a different divestiture the week of June 15, and C&W sued MCI on June 10 to enforce the divestiture to C&W. ISP/C urges the Commission to reopen the docket for public comment after the dust has settled and the specifics of the proposed transactions are known.

<sup>2</sup> ISP/C defines an ISP as an organization providing network connectivity to the Internet.

in Commission proceedings that affect the Internet. ISP/C supports an open and competitive market for Internet services.

### **Background**

On March 20, 1998, ISP/C filed a statement in this proceeding to urge caution in the Commission's assessment of the implications of the proposed MCI-WorldCom merger. Noting that WorldCom's addition of InternetMCI to its portfolio, which already includes UUNet, Gridnet, and ANS, would place up to 50 percent of the backbone under the control of one corporate entity, and pointing to past practices of WorldCom and its affiliates as having possible predatory effects, ISP/C proposed requiring the divestment of InternetMCI from the merged company.

After several other parties in both the United States and the European Community expressed similar concerns, even MCI saw the writing on the wall, and on May 28 announced the divestiture of its "Internet backbone business" to Cable & Wireless plc (C&W).<sup>3</sup> MCI stated its intent to transfer 22 backbone nodes, 15,000 interconnection ports, 50 employees, approximately 40 peering agreements, and contracts with approximately 1,300 ISPs.<sup>4</sup> But MCI will retain its domestic transmission facilities used for Internet services. MCI explained it will also continue to contract with the same retail customers it has now. It proposes to lease back from C&W the

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<sup>3</sup> "Divestiture of MCI Internet Backbone Business" at 1, attachment to *Ex Parte* Notice of MCI Communications Corporation in CC Docket No. 97-211 (filed June 3, 1998).

<sup>4</sup> *Id.* at 6-7.

capacity necessary to serve those customers, thus acting as a reseller over the same facilities it would transfer to C&W.<sup>5</sup>

### **Analysis**

MCI's proposed transaction with C&W, although perhaps a step in the right direction, is too small a step to alleviate the concerns that prompted it.

MCI tries to frame the transaction as though, in the end, MCI would be just another ISP:

In other words, MCI will become a wholesale customer of C&W's backbone services, like the ISPs currently served by MCI's backbone, and MCI will continue to compete in the retail business to provide Internet and value-added services (including Intranet and web-hosting services) utilizing the C&W backbone.<sup>6</sup>

But this is misleading, for MCI would hardly be just another ISP. Through WorldCom, MCI will also control a large fraction — approximately 50% — of the backbone structure on which all ISPs depend. Indeed, the MCI-WorldCom and MCI-C&W transactions together would leave MCI-WorldCom with approximately double the backbone control that MCI enjoys today. No other ISP has anywhere near this much control over the backbone. As a result, MCI-WorldCom would be uniquely positioned to discriminate systematically (and successfully) against its competitors in the retail ISP market.

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<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 7-8. Similarly, “MCI will continue to compete at the retail level with C&W and thousands of other ISPs, by reselling backbone services purchased from C&W. MCI will be dependent on C&W as a backbone provider in the same way, and to the same extent, as third parties opposing the merger claim other ISPs are dependent on supplier of backbone services.” *Id.* at 10.

In short, the C&W transaction fails to accomplish its putative purpose — relieving MCI's vertical concentration in Internet services following the WorldCom transaction.<sup>7</sup> The combination of the WorldCom and C&W transactions still leaves MCI with sufficient power in the backbone market to discriminate unfairly against its competitors in the ISP market. For this reason, the Commission must not approve the MCI-WorldCom transaction unless MCI first divests all of its non-WorldCom Internet business. Alternatively, if MCI prefers to remain a retail ISP, then WorldCom should be required to spin off UUNet. Either remedy would relieve the vertical concentration that otherwise threatens competition for Internet services.

### **Conclusion**

The Internet is the fastest-growing communications medium in the history of civilization. Its impact is reflected not only in the exponential rise in its number of users, but in the staggering diversity of ways in which people employ it to improve and enrich their lives. One widely-cited basis for the Internet's success is its open character. Common technical standards, set largely by consensus, enable providers to invent and offer countless new services in response to market demand. This flexibility is the Internet's greatest strength, and is a direct result of its relatively loose governance.

The biggest danger to the Internet's flexibility lies not in governmental regulation, but rather in the far more destructive prospect of constraints in the form of market power among a

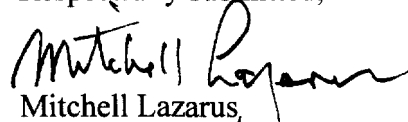
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<sup>7</sup> As noted above, reports in the trade press this week indicate that at least some officials of the European Community agree with this conclusion and are disinclined to give their approval, even though the C&W transaction was constructed originally to satisfy the EC. *Id.* at 1, 4-5.

small number of vertically-integrated providers able to stifle competition for their own benefit.

The MCI-WorldCom transaction is the most tangible threat of that nature to date. It should not be permitted to go forward as proposed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Lazarus".

Mitchell Lazarus  
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June 11, 1998.